IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
WRIT PETITION (L) NO. 2863 OF 2004

M/s. Simran Impex Pvt. Ltd. & Ors.... Petitioners

Vs.

Veerashaiva Co-operative Bank
Ltd. & Ors. ... Respondents

Mr. Shailesh Shah i/by Lalit S. Jain for
Petitioner.

Mr. N.N. Bhadrashetye for Respondent No. 1.

CORAM : F.I. REBELLO,J.
DATED : OCTOBER 27, 2004

P.C.

1. Rule. Heard forthwith.

2. The Petitioner has approached this court to impugn the recovery certificate dated 7.10.2004 and the demand notice dated 14.10.2004. The contention of the Petitioners are that o the earlier date there were orders directing respondents to give inspection of documents. Inspection was given and statement of account was furnished on 21.9.2004, only in respect of two accounts though the recovery was sought in respect of four accounts. Respondents were directed to file their statement on 1.10.1994 on which date statement was filed. However, copy of the statement was not made available to the Petitioners herein. It is further set out that on the date when the matter was posted on account of hospitalization of the Advocate who was handling the matter Petitioenr could not be represented and consequently an exparte order came

to be passed on 7.10.2001. It is therefore, submitted that in these circumstances, impugned order be set aside.

. On behalf of the Respondents, learned counsel contends that this petition is not maintainable as the Petitioners have alternate and efficacious remedy of revision. It is pointed out that in order to file revision, there is a condition prescribed of depositing of 50% amount. It is submitted that only to avoid that deposit, the Petitioners have chosen to recourse of extra ordinary jurisdiction of this court and in these circumstances, this court should not interfere with the impugned order unless petitioners are called upon to deposit the amount as required as if a revision had been filed. It is further pointed out that from the affidavit of Eknath Keshav Dabhade it would be clear that the petitioners were furnished with all the documents and they themselves have acknowledged receipt and or taking inspection of the documents. It is set out that under these circumstances it will not be a fit case for this court to exercise extra ordinary jurisdiction.

3. Having heard learned counsel, in my opinion, the fact remains that the proceedings commenced on 21.7.2004. On 24.9.2004 was fixed as date for the respondent to file their statement of accounts on which date the counsel for the Petitioner was not

present, to make submissions otherwise in law they were entitled to make. It will be in the fitness of things that this court exercises its extra ordinary jurisdiction for setting aside the certificate and remand the matter back to the authority for starting the process afresh from where it was concluded on 1.10.2004. At the highest ends of justice would require that the Petitioners are directed to make some deposit to show that they are bona fidely interested in prosecuting the matter.

4. In the light of that, the following order :

. The impugned certificate dated 7.10.2004 and demand notice dated 14.10.2004 are set aside subject towhat is stated hereinafter.

. The Petitioners in respect of documents which they contend inspection was not given will on or before 9.11.2004 issue letter to the Respondent for furnishing the said document if not issued so far. On receiving such letter, respondents to furnish the said document within seven days thereafter.

. Both the parties to appear before the Recovery Officer on 23.11.2004 at 11.00 a.m. . The Petitioners to deposit before the Recovery Officer or with Respondent Bank sum of Rs. 5 lacs. within six weeks from today. If the amount is deposited,

Recovery Officer to proceed further in the matter.

. If the amount is not deposited, the present petition to stand dismissed.

. The authorities after the time for deposit is completed to dispose of the petition within the period of 12 weeks thereafter.

. Rule made absolute accordingly. No order as to costs.

. P.A. to issue authenticated copy of this order.

(F.I. REBELLO,J.)